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RUEHPT/AMCONSUL PERTH 5230  
RUEHBN/AMCONSUL MELBOURNE 6963  
RUEHDN/AMCONSUL SYDNEY 5242  
RUEATRS/DEPT OF TREASURY WASHINGTON DC  
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UNCLAS SECTION 01 OF 02 CANBERRA 000098

SIPDIS

USTR/CROMERO; DOL/TWEDDING

E.O. 12958: N/A

TAGS: [ELAB](#) [ECON](#) [ETRD](#) [AS](#)

SUBJECT: MONITORING LABOR RIGHTS UNDER AUSTRALIA'S FREE  
TRADE AGREEMENT

REF: STATE 129631

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11. (U) SUMMARY: Australia provides strong protections for workers which meet internationally-recognized standards and its obligations under the U.S.-Australia Free Trade Agreement. Australia is a member of the International Labor Organization (ILO). The current Labor government has strengthened rights for domestic and foreign workers. Organized labor is generally satisfied with existing labor laws. END SUMMARY.

#### RECENT LAW CHANGES

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12. (U) Australia's labor laws provide a strong safety net for workers and relatively generous welfare payments. For the last 25 years, successive governments, both Labor and Liberal have made the labor market more flexible while union coverage has fallen from around 50 to 19 percent. The previous Liberal government's controversial WorkChoices reforms, introduced in March 2006, included:

- removing penalty rates and overtime as minimum standards applying to new agreements;
- abolishing the "no disadvantage test" protecting workers signing individual agreements from being worse off compared to the industry standard or "award" (conditions such as penalty rates and overtime);
- exempting businesses with under 100 employees from unfair dismissal laws;
- restricting what could be bargained in collective agreements;
- increasing employer control over union right of entry.

13. (U) The Rudd Labor government, which came to office in December 2007, pledged to abolish WorkChoices. Its changes included:

- outlawing the signing of new individual agreements. However, businesses with staff on existing individual agreements were permitted to offer "temporary" individual agreements with an expiry date not beyond December 31, 2009 provided they met the "no disadvantage test;"
- reinstating unfair dismissal rights for all workers;
- requiring employers to engage in "good faith" collective bargaining;
- access to compulsory arbitration for low-paid workers involved in collective bargaining;
- easing, but not eliminating, restrictions on union right-of-entry.

## ILO BREACHES?

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¶4. (SBU) Australia has been a member of the ILO since its inception, and is part of the Asia-Pacific Government Group of ILO members. All major unions are affiliated with the governing Australian Labor Party and the umbrella union organization, the Australian Council of Trade Unions (ACTU). Unions strongly welcomed the Rudd government's changes; the ACTU President said labor laws "on balance" met ILO standards. However, some union officials claim aspects of labor laws, inherited from WorkChoices, may breach ILO standards. These are:

- restrictions on what can be negotiated in an agreement;
- restrictions on union right-of-entry;
- restrictions on strike action (such as secondary boycotts, sympathy strikes and striking outside a mandated bargaining period);
- outlawing industrial action in favor of "pattern bargaining" (industry-wide negotiations);
- provisions which enable industrial action to be stopped if it threatens "to cause significant damage to the economy or part of it."

¶5. (U) Prior to the Fair Work Act commencing in July 2009, the ILO's 2009 "Committee of Experts on the Application of Conventions and Recommendations" report raised similar concerns about the possible breaches to ILO standards.

U.S.-AUSTRALIA FREE TRADE AGREEMENT  
QU.S.-AUSTRALIA FREE TRADE AGREEMENT  
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¶6. (U) The U.S.-Australia Free Trade Agreement, effective since 2005, obliges both parties to ensure labor laws "are consistent with "internationally-recognized labor principles." Australian law:

- protects right of association: discrimination on the basis of membership or non-membership of a union is illegal;
- provides right to organize and bargain collectively: however, strikes are confined to a bargaining period; the law subjects strikers to penalties for taking industrial action during the life of an agreement. Strikes must be authorized by secret ballot;
- prohibits use of any form of forced or compulsory labor;
- effectively prevents children from joining the work force full time until they are age 16 or 17 by compulsory educational requirements;
- bans discrimination on the basis of race, gender, religious belief and sexuality;
- mandates minimum wages (the federal minimum wage is currently around USD 12.85 per hour), a 38 hour week (allowing reasonable additional hours), and occupational health and safety standards.

FOREIGN WORKERS  
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¶7. (U) In 2009, the government made changes to the uncapped visa program covering employer-sponsored temporary foreign workers (457 visa program). Welcomed by unions, these included introducing market based minimum salaries for all new and existing 457 visa holders; developing minimum skills requirements that meet Australian standards; requiring visa sponsors to have a strong record of, or demonstrated commitment to, employing local labor and non-discriminatory employment practices; and increasing the minimum English language requirements.

¶8. (SBU) COMMENT: Although union membership has fallen significantly over the last two decades, Australian society

still prides itself on a certain amount of egalitarianism and a strong government role. Driven by a relatively powerful union movement, under a union-friendly Labor government, Australia has made great strides in enhancing workers rights.

The general view among the Rudd government, the general public, and the unions, is that Australian labor laws now afford better protections for workers. The general view among the business community and members of the Opposition, however, is that the gains in productivity and competitiveness made under the previous Liberal government's WorkChoices framework, often described as "U.S.-style" labor laws, have been jeopardized by recent "pro-union" changes.

END COMMENT.

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